UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

v.

ARTHUR NADEL; SCOOP CAPITAL, LLC; and SCOOP MANAGEMENT, INC.

Defendants,

SCOOP REAL ESTATE L.P.; VALHALLA INVESTMENT PARTNERS L.P.; VALHALLA MANAGEMENT, INC.; VICTORY IRA FUND LTD; VICTORY FUND, LTD.; VIKING IRA FUND LLC; VIKING FUND LLC; and VIKING MANAGEMENT LLC

Relief Defendants.
_____/

CASE NO. 8:09-cv-87-T-26ATBM

MOTION TO ALTER OR AMEND JUDGMENT OR ORDER, AND ALTERNATIVELY FOR RELIEF FROM JUDGMENT OR ORDER AND MEMORANDUM OF LAW IN SUPPORT OF MOTION

COMES NOW FIRST NATIONAL BANK OF ALBANY/BRECKENRIDGE, by and through its undersigned attorneys pursuant to Federal Rule 59 and Federal Rule 60, and ask this Court to provide relief from the Order (Doc. #1384), dated March 15, 2019, for the following reasons.

SUMMARY OF ARGUMENT

The Court Order was entered eight days after the Receiver's 44 page motion, without a hearing or opportunity to approve the Receiver's motion. While the Receiver professes to provide due process, equity and fairness, without a hearing, the Court Order already granted the

Receiver's motion and at paragraph two of the Order, approved the Receiver's claims determination, meaning the Receiver's determination are the equivalent of a Final Judgment Order, forcing an unwanted appeal. The First National Bank of Albany/Breckenridge does not want to appeal, and will not need to appeal if the Court eliminates paragraph two of the Order dated March 15, 2019, which determines the claim objections of the Receiver are valid.

In addition, the Receiver intends to surcharge the secured position of First National Bank of Albany/Breckenridge, without its permission or consent, for which this Court approved by entering the Order approving the distributions (see Order paragraphs three through six).

While the Receiver may urge the procedures in the Receiver's motion preserve objections, the Receiver cannot in fairness, reasonably argue the Court finding in paragraph two, is not a final Order determining allowance or disallowance of claims.

ARGUMENT

1) The First National Bank of Albany/Breckenridge, on or about September 10, 2016, filed a secured Proof of Claim (now labeled #5 by the Receiver), to enforce its loan against Quest.

2) Starting on September 5, 2013, the First National Bank of Albany/Breckenridge attempted to intervene to obtain an Order for relief from the stay to allow it to enforce its lien against its security and collateral (see Doc. #1065). This Court denied the motion on September 29, 2013 (Doc. #1073).

3) Thereafter, the Receiver continuously advised he had persons interested in buying the property liened by the bank. Notwithstanding, no sale has occurred in six years.

4) The First National Bank of Albany/Breckenridge has a lien on an office building

located in Lots 1 and 2, Block 36, in the Town of Albany, Texas to secure a purchase money promissory note and mortgage in the amount of $76,000, which in 2013, had a balance of $46,522.48. The note has provision for interest at 7.75% per annum. It is already in the Court file attached as Exhibit "A" to the 2013 Motion to intervene (Doc. #1065).

5) In addition, the bank has a lien on oil and gas leaseholds, personal property and equipment on various leases attached as Exhibit "C" to the filed Motion to intervene (Doc. #1065). This collateral secures a note dated October 13, 2000 for $700,000, modified in February 26, 2013, with the balance being $151,727.66 (these are attached to the Motion to intervene as Exhibits "D" and "E"). The promissory notes provide for interest at 6.25%. As with other documents, there are cross collateralization agreements for any assets liened by the bank to be liens on other bank loans. The Receiver's Motion indicates none of this loan should be paid.

6) First National Bank of Albany/Breckenridge also filed a Renewed Motion to allow the First National Bank of Albany/Breckenridge to go free of the stay (Doc. #1244). This was denied by Order dated September 27, 2016 (Doc. #1248), because the bank filed a Proof of Claim in this proceeding and the Court Order indicates that by doing so, it submitted the exclusive jurisdiction of the Court regarding claims against Quest and its assets, including the properties the bank makes a claim.

7) Since 2013, the bank has received no payments on any of its loans. The bank needs an accounting from the Receiver of any proceeds it has received on assets liened by the bank loans..

8) The Receiver's motion, on pages 16-18, reaches the conclusion the larger note originally for $700,000, which in 2013 had a balance of $151,739, should be paid nothing and

the claim denied (see page 18 of the Receiver's motion). Without an opportunity for the bank to have a day in Court, the Receiver claims the bank knew or should have known Quest was insolvent or engaged in bad faith in making a loan.

9) In addition, the Receiver, not having sold the liened real property or other liened assets, now wants to condition payment of the $46,522 loan to a sale of the office building.

10) By the Receiver's motion, the Receiver has held off the bank for six years, has not sold any of the collateral, does not recognize that interest is due on the secured loans, and conditions the payment to the bank on two things:

A) If the Receiver sells assets with the bank lien. No time period is set. Does this go on into perpetuity?

B) The bank's $46,522 loan be reduced by a surcharge on the collateral to pay the Receiver's administrative fees. There is no basis for the Receiver, without the bank's consent, and after not selling anything or benefitting the bank, to surcharge the bank's collateral to pay the Receiver's administrative costs and fees.

11) Respectfully, the Court Order dated March 15, 2019 (Doc. 1384), overlooked or through oversight, entered the Order without any protections to the lien position of the bank, or a right to have a day in Court in denying the bank's claim for $151,739; not paying the bank any interest on the $151,739 promissory note; or the $46,522.48 loan, and providing for a claim procedure that is cumbersome, expensive and unfair.

12) The claims procedure approved by the Court set forth in the Motion beginning on page 41, makes the Receiver the prosecutor and the judge, without any guidance or oversight by

this Court. The prejudice to creditors by the procedure are many, but summarized as follows:

A) To requires a creditor to object to the Receiver's determination. It requires the creditor, without the benefit of discovery or other procedural safeguards to set forth opposition to the Receiver's determination. In this case, the Receiver's determination is based on speculation, making it impossible to supply details to refute the speculations and conclusions.

B) The creditor must then wait 45 days for the Receiver to act on the objection.

C) The creditor then must file a written response to the Receiver's actions.

D) The Receiver may try to settle or compromise, but has no mandatory obligation to do so.

E) If not settled, the Receiver files a notification with the Court of the Receiver's determination.

F) Only then, subject to the Court's discretion, the Court can rule without an evidentiary hearing or hold an evidentiary hearing.

13) Everything summarized in paragraph 12 of this Motion hardly affords the due process or fundamental fairness and may not afford an opportunity to be heard or jury trial.

14) Finally, the procedure leading to the March 15, 2019 Court Order did not provide a fair opportunity to object or oppose the relief. Procedurally, a party should have had an opportunity to oppose the motion or even discuss it with the Receiver pursuant to Local Rule 3.01(G).

15) Local Rule 3.01(b) provides 14 days to oppose a motion. The Receiver submitted

the Motion on March 7, 2019, and the Court approved the Motion by entering the Order on March 15, 2019.

16) The Local Rule 3.01(G) certification is in violation of the Local Rule because it only included the commission and none of the creditors The certification does not include the First National Bank of Albany/Breckenridge.

17) The Receiver should not be allowed to surcharge against the assets secured by the bank lien. This is because the Receiver has provided no benefit to the bank or any creditor by merely stalling the bank; not finding a buyer; not maintaining the real property; not insuring the real property; and allowing any equity to erode.

18) In fairness, the Court should grant First National Bank of Albany/Breckenridge relief from stay to proceed against the liened assets or revise the Order, because the Receiver has had more than adequate time to sell and has not sold any of the items liened by the bank.

19. In reviewing this motion along with the March 15, 2019 Court Order, the Court Order should:

A) Not condition payment of the bank's claim to a sale of the assets which are liened by the bank loan.

B) Recognize the loans do provide for interest to be paid. The bank should not be denied interest on its secured loan based on speculation and conclusion the bank ....."knew Quest was insolvent and had overvalued its oil and gas interest by thirty times. Further, the First National Bank of Albany/Breckenridge and Van operating had to be aware that Quest was only managing to stay afloat from the influx of money raised from

investors" (see Receiver's motion, p. 20-21).

C) Not deny the bank a deficiency claim if in fact the delays caused by the Receiver have caused the equity to erode in the liened assets to where there is no equity.

D) Have the Receiver return to the bank any proceeds the Receiver has received from the oil and gas leases.

E) Not allow the Receiver to surcharge against the liened assets to pay administrative expenses.

WHEREFORE, it is prayed the Court modify, revise and otherwise correct its Order so all creditors who disagree with the Receiver's conclusions or objections, are not barred by paragraph two of the March 15, 2019 Order; establishing a less cumbersome method to object to the Receiver's objection to any claim (objections should be filed and dealt with by this Court alone); recognize secured creditors should not have their collateral surcharged; recognize secured creditors are entitled to the benefit of their bargain to allow for interest to be recovered at the highest rate of interest , established under Texas law, due to the default; recognize because of the Receiver's delays, if the collateral equity value has eroded, that a deficiency claim be allowed and any fees sought by the Receiver not be surcharged against the bank's liened assets.the bank.

LOCAL RULE 3.01(G) COMPLIANCE

I HEREBY CERTIFY that I have unsuccessfully conferred in good faith with counsel for the Receiver, in an effort to resolve the matters set forth in this Motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished by electronic

transmission to Jared J. Perez, Esquire, 5505 West Gray Street, Tampa, Florida 33609 and electronically filed same with the Clerk of the Court using the CM/ECF system this 26th day of March, 2019.

/s/ Raymond J. Rotella

RAYMOND J. ROTELLA, ESQUIRE of
KOSTO & ROTELLA, P.A.
POST OFFICE BOX 113
ORLANDO, FLORIDA 32802
TELEPHONE 407/425-3456
FACSIMILE 407/423-5498
FLORIDA BAR NO. 157951
Rrotella@kostoandrotella.com
Dmeyer@kostoandrotella.com
Attorneys for First National Bank of Albany/Breckenridge